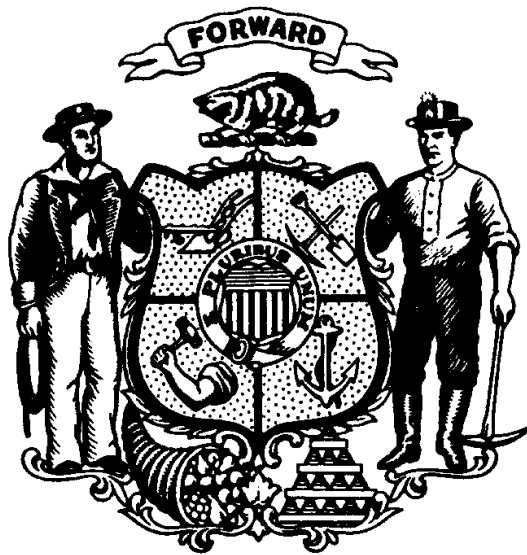


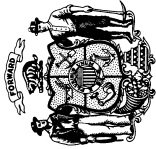
WISCONSIN ADMINISTRATIVE REGISTER

No. 494



Publication Date: February 14, 1997
Effective Date: February 15, 1997

REVISOR OF STATUTES BUREAU
SUITE 800, 131 WEST WILSON STREET
MADISON, WISCONSIN 53703-3233



State of Wisconsin Revisor of Statutes Bureau

Suite 800, 131 West Wilson Street, Madison, Wisconsin 53703-3233
(608) 266-2011 • Fax (608) 267-0410

Bruce Munson
Revisor of Statutes

Gary L. Poulson
Deputy Revisor of Statutes
Assistant Revisor-Administrative Code

November 14, 1996

The 1995-96 Wisconsin Statutes and Annotations can be ordered now in bound volumes or on the WisLaw™ CD-ROM

Prices for the 1995-96 Wisconsin Statutes and Annotations bound volumes have been established and are detailed below:

| Hard Cover With Postage | Hard Cover Without Postage | Soft Cover | |
|----------------------------|-------------------------------|--------------|-----------------|
| | | With Postage | Without Postage |
| \$107.00 | \$101.00 | \$96.00 | \$91.00 |

Send orders to Document Sales, 202 S. Thornton Avenue, P.O. Box 7840, Madison, WI 53707-7840, telephone (608) 266-3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to *WI Department of Administration*. Credit card orders using either VISA or Mastercard may be placed by calling 1-800-DOC-SALE. Local customers may call 264-9419 to place an order. Delivery to Document Sales is scheduled to begin in late January, 1997.

WisLaw™, the computer-searchable CD-ROM, includes both the DOS and Windows version of Folio Pre Views search and retrieval software. WisLaw™ includes the **Wisconsin Statutes and Annotations**, **Supreme Court Rules**, and recent **Opinions of the Attorney General**. In addition, the **Wisconsin Acts**, with hypertext links to the affected statutes, are included on WisLaw™.

WisLaw™ is only available by subscription for 12-month periods; the number of CD's to be released in any 12-month period is indeterminate. WisLaw™ End-user license and subscription order forms are available at Document Sales; CD's will only be delivered upon receipt of a signed license and subscription form and full payment. A 12-month subscription plus a license for no more than one simultaneous user costs \$99. A 12-month subscription plus a license for no more than 4 simultaneous users costs \$149. A 12-month subscription plus a license for no more than 10 simultaneous users costs \$199. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

TABLE OF CONTENTS

Emergency Rules Now In Effect.

Agriculture, Trade & Consumer Protection:

Corrections:

Development (Commerce):

Health & Family Services:

Health & Family Services:

Health & Family Services:

Health & Social Services (Workforce Development):

Industry, Labor & Human Relations (Workforce Development):

Insurance, Commissioner of:

Natural Resources:

Transportation:

Workforce Development:

Workforce Development:

Pages 5 to 11.

Rule relating to prohibiting certain gaseous hydrocarbons in mobile air conditioners.

Rule relating to inmate mail.

Rules relating to annual allocation of volume cap.

Management, Policy & Budget, Chs. HSS 1—Rules adopted revising ch. HSS 1, relating to parental liability for the cost of care for children in court–ordered substitute care. **[FIRST APPEARANCE]**Community Services, Chs. HSS 30—Rules relating to administration of child care funds.
Rules relating to child care providers' certification.
Rule relating to child care funds and copayments.Health, Chs. HSS 110—Rules adopted creating ch. HFS 125, relating to do–not–resuscitate orders. **[FIRST APPEARANCE]**Economic Support, Chs. HSS 200—

Rules relating to time limits on benefits for AFDC recipients in the Job Opportunities and Basic Skills (JOBS) program.

Labor Standards, Chs. ILHR 270–279

Rules relating to the minimum wage.

Rules relating to premium rates for the Health Insurance Risk–Sharing Plan (HIRSP).
Rule relating to requirements for tax deductible long–term care insurance policies.Fish, Game, etc., Chs. NR 1–Rule relating to notice of receipt of an application to incidentally take an endangered or threatened species.
Rules relating to the Lake Superior fisheries management plan.

Rules relating to general transportation aids.

Rules relating to occupational driver's license.

Economic Support, Chs. DWD 11–59

Rules relating to administration of child care funds and required parent copayments.

Wage Rates, Chs. ILHR 90–94

Rules relating to prevailing wage rates for state or local public works projects.

Scope Statements.

Commerce:

Dentistry Examining Board:

Dietitians Affiliated Credentialing Board:

Financial Institutions—Savings Banks:

Natural Resources (Fish, Game, etc., Chs. NR 1—):

Natural Resources (Fish, Game, etc., Chs. NR 1—):

Pages 13 to 16.

Ch. Comm 5 – Relating to credentials.

DE Code – Relating to clarification of administrative rules.

DI Code – Relating to clarification of administrative rules.

SB Code – Relating to allowing savings banks with marketable investment securities and corporate debt instrument to include these assets in calculating liquidity.

Ch. NR 10 – Relating to establishment of the 1997 migratory game bird hunting seasons.

NR Code – Relating to migratory game bird harvest information program/approval for hearing.

Natural Resources (Fish, Game, etc., Chs. NR 1—):

Pharmacy Examining Board:

Regulation & Licensing:

Transportation:

NR Code – Relating to authority to hold public meetings on developing horse trails on three Wildlife Areas (WA's).

Phar Code – Relating to clarification of administrative rules.

RL Code – Relating to administrative rules relating to auctioneers and auctioneer companies.

Ch. Trans 152 – Relating to fees paid by Wisconsin-based interstate trucking companies for IFTA decals and licenses.

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse.

Agriculture, Trade & Consumer Protection:

Corrections:

Health & Family Services:

Page 17.

Ch. ATPC 124 – Relating to price comparison advertising.

Ch. DOC 303 – Relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline.

Ch. HSS 70 – Relating to loans to help establish group homes for recovering substance abusers.

Notices of Hearings or of Proposed Rules.

Administration:

Agriculture, Trade & Consumer Protection:

Public Defender:

Public Service Commission:

Pages 19 to 27.

Proposed creation of ch. Adm 66, relating to manufactured home dealer financial eligibility.

Proposed repeal of ch. Trans 141 and creation of ch. Adm 67, relating to manufactured home dealer trade practices.

Proposed creation of ch. Adm 68, relating to licensing periods and fees for manufactured home dealers and salespeople.

Hearings to consider revisions to ch. ATPC 124, relating to price comparison advertising.

Hearing to consider s. PD 3.02, relating to the cost of retained counsel.

Hearing to consider revision of ch. PSC 114, relating to the Wisconsin Electrical Code, Volume 1.

Notice of Submission of Proposed Rules to the Presiding Officer of Each House of the Legislature, Under S. 227.19, Stats.

Chiropractic Examining Board:

Corrections:

Corrections:

Emergency Response Board:

Employee Trust Funds:

Health & Family Services:

Hearing & Speech Examining Board:

Hearing & Speech Examining Board:

Labor & Industry Review Commission:

Medical Examining Board:

Natural Resources:

Page 28.

(CR 96–95) – SS. Chir 6.015 and 6.02 (27) and ch. Chir 11

(CR 96–175) – S. DOC 309.05 (2) (d)

(CR 96–206) – SS. DOC 328.20 and 333.16

(CR 96–129) – Ch. ERB 6

(CR 96–167) – S. ETF 60.53

(CR 95–235) – Ch. HSS 90

(CR 96–162) – SS. HAS 4.03, 5.02, 6.02, 6.065 and 6.09

(CR 96–173) – S. HAS 6.09 (2) (o)

(CR 96–136) – Chs. LIRC 1 to 4

(CR 96–158) – Ch. Med 13

(CR 96–159) – SS. NR 10.01, 10.26 and 11.08

***Administrative Rules Filed With the Revisor of
Statutes Bureau.******Page 29.***

| | |
|---------------------------|--|
| Health & Family Services: | (CR 95–236) – Ch. HFS 89 |
| Natural Resources: | (CR 96–74) – SS. NR 7.04, 7.05 and 7.06 |
| Natural Resources: | (CR 96–77) – Ch. NR 235 |
| Natural Resources: | (CR 96–78) – Ch. NR 233 |
| Natural Resources: | (CR 96–86) – SS. NR 439.01, 484.03, 484.04 and 484.10 and ch. NR 460 |
| Natural Resources: | (CR 96–87) – Chs. NR 400, 407, 423, 460, 468 and 469 and ss. NR 406.04 and 484.04 |
| Workforce Development: | (CR 96–140) – SS. HSS 55.70 to 55.77 and ch. DWD 56 |

EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT

Department of Agriculture, Trade & Consumer Protection

Rule adopted creating s. ATCP 139.04 (11), relating to prohibiting the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Finding of Emergency

(1) On June 2, 1995, the United States Environmental Protection Agency ("EPA") issued a final rule prohibiting the use of HC-12a, a hydrocarbon-based refrigerant containing liquified petroleum gas, as a refrigerant in mobile air conditioning systems. EPA prohibited HC-12a, and a predecessor product called OZ-12, because of safety risks associated with the use of flammable refrigerants in mobile air conditioning systems. According to EPA, the manufacturer of HC-12a did not provide adequate information to demonstrate that the product was safe when used in a mobile air conditioning system.

(2) Despite the current EPA rule, at least one company is currently engaged in manufacturing and distributing HC-12a for use in motor vehicle air conditioning systems. The Idaho manufacturer argues that EPA lacks jurisdiction to regulate the sale of its product. HC-12a is currently being offered, distributed or promoted for sale at wholesale and retail outlets in Wisconsin and surrounding states, for use as a refrigerant in mobile air conditioning systems.

(3) HC-12a is a highly flammable substance, as defined by the American Society of Testing and Materials (ASTM) standard test procedure for refrigerants, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of HC-12a or its predecessor, OZ-12, in mobile air conditioning systems is inconsistent with standards adopted by the Society of Automotive Engineers.

According to those standards, refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

(4) At least 13 states have enacted legislation prohibiting the sale of refrigerants for use in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

(5) HC-12a and other hydrocarbon-based refrigerants, when sold for use in motor vehicle air conditioning systems, present a serious risk to public health and safety for the following reasons:

(a) Motor vehicles and mobile air conditioning systems are not currently designed to use flammable refrigerants, or to prevent hazards associated with flammable refrigerants.

(b) Refrigerants in mobile air conditioning systems commonly leak into the engine compartments or passenger compartments of motor vehicles. Leaking refrigerant is often routed into the passenger compartment through the air distribution system from the evaporator. Hydrocarbon refrigerants, which are heavier than air, will tend to accumulate in low or confined spaces of a motor vehicle.

(c) Hydrocarbon refrigerants are flammable at low concentrations.

(d) Internal components of a motor vehicle provide many potential sources of ignition for flammable refrigerants. Passenger activities, such as smoking, may also create ignition sources.

(e) Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers. Automotive technicians who test for leaks, or who repair or service mobile air conditioning systems containing flammable refrigerants, are also at risk.

(6) The risk to public health and safety cannot be adequately addressed by product packaging or labeling, for the following reasons:

(a) The use of flammable hydrocarbon-based products in motor vehicle air conditioning systems is inherently hazardous. That hazard will not be materially altered by mere packaging or labeling.

(b) Use is hazardous to persons who are not aware that the refrigerant is present, and have not have seen or read the product label.

(c) Current product labels for HC-12a already contain a warning statement that the contents are under pressure and are extremely flammable. Current labels direct use by qualified personnel only, and list other cautions and instructions when recharging a mobile air conditioning system with this substitute refrigerant. These label statements do not materially alter the hazard inherent in the use for which the product is sold. There are few if any protective actions which a customer or technician could take to reduce the hazards associated with use of the product.

(d) There are no automotive industry standards which would allow a flammable refrigerant to be used in a motor vehicle air conditioning system as currently designed.

(7) Flammable hydrocarbon-based refrigerants, including HC-12a, OZ-12, and other refrigerants containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons, pose a serious risk to public health and safety when sold for use as refrigerants in mobile air conditioners. At this time, the public health and safety can only be protected by keeping these products out of the channels of commerce in this state. The department can and should adopt rules, under ss. 93.07(1) and 100.37(2), Stats., prohibiting the sale of such products in this state.

(8) Pending the adoption of rules according normal administrative rulemaking procedures, it is necessary to adopt

emergency rules under s. 227.24, Stats., to protect the public health, safety and welfare.

Publication Date: October 9, 1996
Effective Date: October 9, 1996
Expiration Date: March 8, 1997
Hearing Date: November 15, 1996

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

Rules adopted repealing **ch. DOD 13** and creating **ch. Comm 113**, relating to the annual allocation of volume cap.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately \$260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Hearing Date: February 13, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules adopted creating **s. DOC 309.05 (2)(d)**, relating to inmate mail.

Finding of Emergency

The Department of Corrections finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

Publication Date: August 15, 1996
Effective Date: August 15, 1996
Expiration Date: January 12, 1997
Hearing Dates: January 10, 13 & 14, 1997
Extension Through: March 12, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Management, Policy and Budget, Chs. HSS 1--)

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court-ordered substitute care.

Exemption From Finding of Emergency

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court-ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court-ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court-ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court-ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or

assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

Publication Date: January 22, 1997

Effective Date: January 22, 1997

Expiration Date: June 21, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Health and Social Services

(Community Services, Chs. HSS 30---)

1. Rules were adopted revising ss. HSS 55.70 to 55.76, relating to administration of child care funds.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance–related rules. They are for administration of health care funds. They will take effect on July 1, 1996.

Analysis

The Department's rules for county agency, tribal agency and other child care administrative agency administration of funds for child day care under s. 46.98, Stats., are revised by this order to bring the rules into compliance with statute changes made by 1995 Wis. Acts 27 and 289 and changes in federal regulations, including federal regulations for child care and development block grant funding, 45 CFR Parts 98 and 99, and at–risk child care, 45 CFR Part 257, since the rules were last revised in late 1991; to made policies relating to eligibility for low–income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

1. Income Eligibility

Income eligibility for low income child care is changed to be in compliance with changes made in s. 46.98 (4), Stats., by Act 289.

2. Costs Charged to Parents

Parent co–payment responsibilities are revised to be those established in state law based on family income and the cost of care.

3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to received low–income child care funds when the parents are in training or educational programs is modified so that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

4. Loss of Eligibility

A local agency is permitted to determine that a parent is no longer eligible for child care funds if the parent fails to make required co–payments or provides false information to the agency about income or other matters affecting eligibility.

5. Recovery of Funds

Rules are added in compliance with 1995 Wis. Act 27 to provide for recovery of funds from a parent if the parent was not eligible for child care funds, and for recovery of an overpayment made to a provider when the provider is responsible for the overpayment.

6. Reimbursement

Local agencies are permitted to reimburse parents under certain circumstances for the cost of health care services or to make funds available to parents for the purchase of child care services, and local agencies are directed when to reimburse child care providers on the basis of authorized units of service or for days of attendance.

7. Authorized Child Care Providers

Local agencies are permitted to make payments, under certain conditions, to child care providers who are not licensed or certified, including:

- a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.

- b. When child care is on–site and short–term for parents in training or education programs.

- c. When short–term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

8. Higher Rates for Higher Quality Care

Local agencies are required to pay higher for child care to providers who meet higher quality of care standards, as allowed under federal regulations.

9. Reimbursement Rate Categories

Reimbursement rates are required to two age categories and five provider types, a change from earlier policy.

10. Elimination of Rules for Respite Child Care

Rules for respite child care are eliminated, now that there is no longer a separate fund program. The 1995–97 state budget folded funding for respite child care into general community aids allocations for counties.

Publication Date: June 29, 1996

Effective Date: July 1, 1996

Expiration Date: November 28, 1996

Extension Through: March 27, 1997

2. Rules adopted revising ss. HSS 55.55 to 55.63, relating to certification of child care providers.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance–related rules. They are for certified child care. They will take effect on July 1, 1996.

Analysis

The Department's current rules for certification of family day care providers, in–home day care providers and school–age day care programs are amended by this order to bring the rules into compliance with recent statute changes, in particular the changes made by 1995 Wis. Act 289 in establishing Wisconsin Works (W–2), a new system of assistance for families with dependent children which will replace Aid to Families with Dependent Children (AFDC), and to add needed protections for children, reduce or eliminate unnecessary requirements and clarify the authority of certifying agencies.

Key changes include:

1. Provisional Certification

Modifying standards for provisional certification so that no training is required, in compliance with Act 289 changes in the statutes.

2. Limited Certification

Deleting the category of limited certification, in compliance with Act 289 changes in the statutes.

3. Training for Regular Certification

Deleting the optional requirement to add 5 hours of initial training for regular certification, in order to standardize regulation statewide.

4. Criminal Records Check

Adding requirements for state criminal records checks and FBI criminal record check under certain circumstances, as required by Act 289 changes in the statutes.

5. Certification Fee

Permitting counties and tribal agencies to charge certification fees, as allowed under Act 289, not to exceed licensing fees for family day care centers plus the cost of criminal record checks.

6. Acceptance of Certification

Providing that certification issued by one certifying agency is to be accepted as valid by other certifying agencies.

7. Certification Exemption

Exempting specified child care arrangements from certification because those arrangements are short-term.

8. Sanction Authority

Giving sanction authority to certifying agencies when there is danger to the health, safety or welfare of children in care.

9. School-Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

- a. Physical exams for children and staff (replaced by a health history requirement).
- b. 75 square feet of outdoor space per child.
- c. Daily outdoor activities.
- d. A place for rest or relaxation.
- e. Ongoing communication with the child's parent.
- f. Making copies of the certification standards available to all parents.

10. Parochial and Private Schools

Deleting rules related to certification of parochial and private schools since those programs can become licensed in order to receive public child care funding.

11. Parent Checklist

Deleting the rules requirement that parents in certified family day care and in-home day care complete and return a checklist of basic certification standards but permitting counties and tribes to continue to require it.

12. Other New or Changed Rules

- a. Clarifying what is acceptable supervision and limiting the number of hours a provider can provide child care per day.
- b. Requiring TB tests for all certified providers.
- c. Requiring proper hand washing for child care providers and children.
- d. Changing the water testing requirement when a public water supply is not available to be a one-time test prior to or within 3 months of initial certification.
- e. Requiring certified providers to report relevant information to the certifying agency.
- f. Prohibiting consumption of alcoholic beverages or controlled substances on the premises during hours of operation.
- g. Prohibiting discrimination.

Publication Date: June 29, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Extension Through: February 28, 1997

3. Rules adopted repealing s. HSS 55.76 (5), created as an emergency rule relating to the administration of child care funds and required co-payments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Congress has just enacted welfare reform legislation which makes major changes to the federal welfare system, in many cases replacing federal entitlements with block grants to the states. The Governor has directed the creation of a Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. Under these circumstances, it is necessary to withdraw the schedule for child care co-payments and the phase-in co-payment formula which were implemented by emergency rule on July 1 of this year. This will avoid the administrative problems and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

Publication Date: August 13, 1996
Effective Date: August 13, 1996
Expiration Date: November 28, 1996
Extension Through: March 27, 1997

EMERGENCY RULES NOW IN EFFECT

Health and Family Services (Health, Chs. HSS 110--)

Rules adopted creating **ch. HFS 125**, relating to do-not-resuscitate bracelets to alert emergency health care personnel.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

A recent session law, 1995 Wis. Act 200, created ss. 154.17 to 154.29, Stats., relating to a do-not-resuscitate (DNR) order written by the attending physician for a patient who requests the order and who has a terminal condition or a medical condition such that, if the patient were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or would cause significant physical pain or harm that would outweigh the possibility of successful restoration of the function for an indefinite period of time. A DNR order directs emergency health care personnel not to attempt cardiopulmonary resuscitation on a patient for whom the order is issued if that person suffers cardiac or respiratory arrest. Emergency health care personnel will know if there is a do-not-resuscitate order in effect if the patient has on his or her wrist a do-not-resuscitate bracelet which has been affixed there by the patient's attending physician or at the direction of the patient's attending physician. Emergency health care personnel are expected to follow a do-not-resuscitate order unless the patient revokes the order, the bracelet appears to have been tampered with or the patient is known to be pregnant.

Section 154.19 (3) (a), Stats., created by Wis. Act 200, permits the Department to establish procedures by rule for emergency health care personnel to use in following do-not-resuscitate orders, and s. 154.27, Stats., as created by Wis. Act 200, requires the Department to establish by rule a uniform standard for the size, color and design of do-not-resuscitate bracelets.

These rules are being published by emergency order because while most Wis. Act 200 provisions have taken effect and do-not-resuscitate orders are being written for patients who are qualified, as defined in s. 154.17 (4), Stats., as created by Wis. Act 200, and request the order, without rules that establish a uniform

standard for the bracelets the Department cannot approve bracelets. If the bracelet is not approved by the Department, it cannot be affixed. In the absence of a DNR bracelet on the wrist of a person in cardiac or respiratory arrest, emergency health care personnel ordinarily cannot know that a DNR order is in effect, and so must initiate cardiopulmonary resuscitation which in some cases will contravene a DNR order.

The rules establish a uniform standard for do–not–resuscitate bracelets and a procedure for emergency medical technicians (EMTs), first responders and emergency health care facility personnel to use in following do–not–resuscitate orders.

Publication Date: January 18, 1997

Effective Date: January 18, 1997

Expiration Date: June 17, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Economic Support, Chs. HSS 200–)

Rules adopted creating s. **HSS 201.135**, relating to time limits on benefits for AFDC recipients participating in the JOBS program.

Exemption From Finding of Emergency

The Legislature in s. 275 (3) of 1995 Wis. Act 289 directed the Department to promulgate the rule required under s. 49.145 (2) (n), stats., as created by Wis. Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency. The rule will take effect on October 1, 1996.

Analysis Prepared by the Department of Workforce Development

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W–2), the replacement program for AFDC, as created by 1995 Wis. Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W–2 employment position benefits or a combination thereof. Under s. 49.145 (2) (n), Stats., as created by 1995 Wis. Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W–2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141 (2) (b), Stats., as created by 1995 Wis. Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W–2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to count toward the 60–month limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which proves that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the Federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS)

Training Program. Implementation of the time limits is part of the continuing transition from AFDC to the W–2 program. W–2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long–term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term “actively participating” in the JOBS program and includes criteria county or tribal economic support agency would use to determine whether an extension of the 60 month time limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

Publication Date: September 30, 1996

Effective Date: October 1, 1996

Expiration Date: February 28, 1997

Hearing Date: November 19, 1996

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

[Workforce Development]

(Labor Standards, Chs. ILHR 270–279)

Rules adopted revising **ch. ILHR 272**, relating to the minimum wage.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employees in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employees would be subjected to confusion and uncertainty in the calculation and payment of wages.

Publication Date: August 28, 1996

Effective Date: October 1, 1996

Expiration Date: February 28, 1997

Hearing Date: December 17, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Commissioner of Insurance

1. Rule adopted revising s. **Ins 18.07 (5) (b)**, relating to a decrease in 1996–97 premium rates for the health insurance risk–sharing plan.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e), Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

1996-97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan ("HIRSP") board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP's operating and administrative costs. This rule adjusts the premium rates for the period of October 1, 1996 through June 30, 1997, based upon a recalculation of costs and subsidy payments for the 1996-1997 fiscal year. This adjustment represents a 12% reduction in premium payments for the both the non-subsidized major medical and medicare plans for person under age 65. The rates for low-income persons entitled to a premium reduction under s. Ins 18.07 (5) (b) are not affected.

Publication Date: September 4, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 8, 1996

2. A rule adopted creating s. Ins 3.46 (18), relating to the requirements for tax deductible long term care insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal "Kassebaum-Kennedy" law, P.L. 104-191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

Publication Date: December 20, 1996
Effective Date: January 1, 1997
Expiration Date: May 31, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

1. Rule adopted creating s. NR 27.07, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification

procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: November 18, 1996
Effective Date: November 18, 1996
Expiration Date: See section 12m, 1996 Wis. Act 296
Hearing Date: January 14, 1997

2. Rules adopted revising chs. NR 25 and 26, relating to the Lake Superior fisheries management plan.

Finding of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: November 18, 1996
Effective Date: November 28, 1996
Expiration Date: April 27, 1997
Hearing Date: December 17, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Transportation

1. Rules adopted revising ch. Trans 76, relating to general transportation aids.

Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles*, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

Publication Date: October 25, 1996
Effective Date: October 25, 1996
Expiration Date: March 24, 1997
Hearing Date: December 16, 1996

2. Rules adopted revising ch. Trans 117, relating to occupational driver's license.

Finding of Emergency

1995 Wis. Act 269 rewrote state law regarding the issuance of occupational licenses. That Act goes into effect on November 1, 1996. Absent this emergency rule making, the Department will lack rule authority necessary to administer the new law. This emergency rule will permit the Department to issue occupational licenses until the permanent rule establishing procedures for issuing occupational licenses are in place. Therefore, the Department of Transportation finds that an emergency exists and that the rule is necessary.

Publication Date: November 1, 1996
Effective Date: November 1, 1996
Expiration Date: March 31, 1997
Hearing Date: November 26, 1996

EMERGENCY RULES NOW IN EFFECT**Workforce Development
(Economic Support)**

Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997

EMERGENCY RULES NOW IN EFFECT**Workforce Development
(Wage Rates, Chs. ILHR 290–294)**

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

1995 Wis. Act 213 made a number of major changes to the laws which require the department to determine prevailing wage rates for state and local public works projects. In place of a case-by-case investigations, the Department of Workforce Development is required to conduct an annual survey of employers and issue prevailing wage rate determinations for all trades or occupations in all areas of the state throughout the year based on the survey data. The statutes also provide that members of the public, employers, local governmental units and state agencies may ask the DWD to review prevailing wage rate determinations under a number of specified circumstances.

This emergency rule establishes deadline and appeal criteria for the process that will be used to compile the 1996 survey results and consider requests for review. The use of an emergency rule for this purpose will benefit the public, employers local governments units and state agencies by giving them clear information as to the procedures to be followed, and it will also help the DWD to meet the statutory requirement that prevailing wage rates be compiled and issued promptly.

Publication Date: December 11, 1996
Effective Date: December 11, 1996
Expiration Date: May 10, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 5 – Relating to credentials.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to amend ch. Comm 5. The rule will revise the contractor financial responsibility certification rules to be consistent with the statutory changes in 1995 Wis. Act 392, relating to expanding the scope of the certification to include pre-1980 dwellings. The rule will also address inconsistencies that have been discovered since the implementation of ch. Comm 5.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently, the scope of the contractor financial responsibility certification is limited by rule to work on one- and 2-family dwellings constructed since 1980. The new rule will expand the scope of the certification to include pre-1980 dwellings also. Because 1995 Wis. Act 392 specifies that the scope of the certification is expanded, there are no policy alternatives for this rule revision. If the inconsistencies in ch. Comm 5 are not addressed, there will continue to be problems with the administration of the chapter.

Statutory authority for the rule:

The statutory authority for the rule is 1995 Wis. Act 392 and s. 101.02 (1), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Department estimates that it will take approximately 70 hours to develop this rule. This time includes drafting the rule, preparing related documents, and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Dentistry Examining Board

Subject:

DE Code – Relating to clarification of administrative rules.

Description of policy issues:

Description of the objective of the rule:

The changes being recommended relate to such technical matters as:

- ☐ Amending form, style, grammar or punctuation in order to improve readability;
- ☐ Eliminating outdated provisions; and,
- ☐ Updating citations to statutes for accuracy.

They also create a provision referencing the provision of reasonable accommodations required under the Americans With Disabilities Act.

Policy analysis:

The proposed changes do not alter or modify any current substantive requirements of licensees or applicants for licensure. More specifically, the provisions would:

- Update citations referencing statutes which have been renumbered, modified or repealed.
- Repeal references to “registration” or “certification” since the statutes refer to dentists and dental hygienists as being licensed.

- Clarify the specific examinations.
- Repeal an outdated transition provision.
- Create a provision relating to reasonable accommodations, as required under the Americans with Disabilities Act.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 447.02, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

10 hours.

Dietitians Affiliated Credentialing Board

Subject:

DI Code – Relating to clarification of administrative rules.

Description of policy issues:

Objective of the rule:

The changes being recommended relate to such issues as:

- ☐ Form and style;
- ☐ Clarity, grammar and punctuation; and
- ☐ The repeal of outdated provisions.

They also include provisions to address:

- The Americans with Disabilities Act; and
- Cheating on examinations.

Policy analysis:

The proposed changes focus primarily on minor defects in the form, style, grammar, and punctuation of the existing rules; however, there are also two substantive provisions. The first one addresses the Americans with Disabilities Act, and the second provision offers a penalty for cheating on examinations.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 448.74, Stats.

Estimate of the amount of time that state employees will spend to develop the rule, and of other resources necessary to develop the rule:

10 hours.

Financial Institutions (Savings Banks)

Subject:

SB Code – Relating to allowing savings banks with marketable investment securities and corporate debt instrument to include these assets in calculating liquidity.

Description of policy issues:

A) Description of the objective of the rule:

This rule would amend s. SB 3.08, Wis. Adm. Code, titled “Liquidity”. The rule prescribes how the required liquidity level of savings banks is calculated and enumerates the treatment of certain assets in the calculation process.

In s. SB 3.08 (4), the term “primary liquid assets” is defined for purposes of using that phrase in calculating liquidity. Several types of liquid assets to be included in calculating “primary liquid assets” are listed.

This rule would add to that list a type of liquid assets commonly owned by savings banks. Enumerated would be certain marketable investment securities and corporate debt instruments.

The objective is to allow savings banks with marketable investment securities and corporate debt instrument to include these assets in calculating liquidity. This rule includes assets which should have been, but were not, included in adopting the rule in 1996.

B) Description of existing policies relevant to the rule and of new policies proposed to be included, and an analysis of policy alternatives:

Currently, when savings banks calculate their liquidity, they are not authorized to include in "primary liquid assets" the types of assets specified in this rule.

If this rule is adopted, when savings banks calculate their liquidity, they may include in "primary liquid assets" marketable corporate securities and corporate debt instruments with a remaining maturity up to 36 months which are rated in one of the top four highest categories by a nationally recognized rating service.

A policy alternative would be to not adopt this rule. This would, however, not properly take into account assets which are highly liquid, therefore penalizing savings banks which invest in them.

Statutory authority for the rule:

Section 214.715 (1) (a) and (d), Stats.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

About 30 hours will be required, from drafting the rule through complying with all rulemaking requirements to final adoption.

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Subject:

Ch. NR 10 – Relating to establishment of the 1997 migratory game bird hunting seasons.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The rule changes the basic migratory game bird hunting season rules to comply with changes required by the U.S. Fish and Wildlife Service and suggested by the public during the hearing process.

The action does not represent a change from past policy.

Statutory authority:

Section 29.174, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The anticipated time commitment is 73 hours. Three public hearings will be held in August, 1997 at Wausau, LaCrosse and Fond du Lac.

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Subject:

NR Code – Relating to migratory game bird harvest information program/approval for hearing.

Description of policy issues:

Background:

For many years, states and the U.S. Fish and Wildlife Service (FWS) have been concerned about the accuracy and precision of the estimates of:

- ① Number of individuals hunting migratory game birds;
- ② The level of effort these individuals expend annually; and
- ③ Their harvest.

For some groups of species, such as ducks, the estimates were considered much better than for other species (woodcock). Further, the number of names obtained from a sample of Federal "Duck

Stamp" purchasers was not adequate, because that stamp was required by only duck and goose hunters, not for hunters of other species of migratory game birds. In 1978, the International Association of Fish and Wildlife Agencies created a special committee to work with FWS to develop a better process. It took over 10 years for the states and FWS to reach agreement on a new survey process, the Harvest Information Program (HIP).

States and FWS agreed that, by 1998, all migratory game bird hunters in each state would be required to annually provide their name, address and other necessary information as a condition for hunting migratory game birds. In addition to names and addresses, information as to what species of migratory game birds the individual hunts and the level of participation is asked. The process now provides a reasonable sampling frame to obtain adequate participation and harvest information. States were given the option to:

- Include the questions in their regular license application; or
- Issue a separate permit.

States' entry into the program has been phased-in, with the first states entering the program in 1992. Initially, Wisconsin was scheduled to enter the program in 1997, but because we were unable to obtain legislative approval to charge a fee for this permit, and because we intended to change to "point of sales" in issuing licenses, FWS authorized us a one year delay. We are required by Federal Code to have HIP fully implemented by the 1998 migratory game bird season.

Requested action:

This action represents a change from past policy:

Authorization is requested to begin developing rules that will allow full implementation of HIP by the 1998 hunting season and compliance with FWS's HIP initiative.

Staff has already begun limited discussions with committees of the Conservation Congress, the Wildlife Federation, Wisconsin Waterfowl Association and other major groups representing migratory game bird hunters in Wisconsin. To date, these discussions have been positive; however, some resistance to implementing HIP is expected from our hunters, who will see it as another infringement on the privilege to hunt, and by license vendors, as added workload.

Federal code requires Wisconsin to provide FWS names, addresses and certain information for all individuals hunting migratory game birds in the state within a specified time period. Consistent with Federal Code, this rule will require all migratory game bird hunters to be HIP-certified annually prior to hunting any migratory game birds. HIP certification is intended to be included in the new "point of sales" process, to reduce the burden on migratory game bird hunters and meet FWS's requirements. Vendors will not be reimbursed for collecting this additional information.

Fiscal considerations:

The Department does not have statutory authority to charge a fee for HIP certification; thus, current budgets will have to absorb the costs of the program. However, FWS has indicated that we can receive about \$80,000 from them to help meet our startup cost. These dollars are available now at our request. In addition, for the first two years a state is in the program, FWS will pay the state \$0.30¢ per licensed migratory game bird hunter name and address submitted within the specified time frame. Beginning with year 3, FWS reimbursement will drop to \$0.10¢ per name and address submitted. Assuming FWS budgets are not drastically cut in the future, FWS intends to reimburse states at the \$0.10¢ rate, ad infinitum. These reimbursements will not cover operation costs, but will help offset the loss encountered.

Statutory authority:

Section 29.174, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The anticipated time commitment is 22 hours. Two public hearings will be held in June, 1997 at Madison and Wausau.

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Subject:

NR Code – Relating to authority to hold public meetings on developing horse trails on three Wildlife Areas.

Description of policy issues:

Authority is requested to convene public meetings on the development of horse trails on three Wildlife Areas (WA's), and to submit the proposal for one of the three WA's to the Federal Aid Office of the U.S. Fish and Wildlife Service (Service) for review. Both of these activities are prerequisite to establishing horse trails on these WA's. Subsequently, master plan amendments will be sought for each WA where consensus is reached among user groups.

Background:

Joanne Jones of the State Trails Council initially contacted the Department in 1994, requesting consideration of public properties in Wisconsin for horse trail development. The Bureau of Wildlife Management (Bureau) began working with the Wisconsin State Horse Council (Council) to evaluate five WA properties:

- ❖ Tom Lawin (Jim Falls);
- ❖ Goose Lake (Deerfield);
- ❖ Yellowstone (Argyle);
- ❖ Sandhill (Babcock); and
- ❖ Navarino (Shawano).

In addition, a process for evaluation was established and applied.

Briefly, review teams consisting of property manager, district planner, district trails coordinator, and a single Bureau representative used the Wisconsin State Trails Strategic Plan format to evaluate each WA for horse trail potential. Reviews were conducted in 1995 and 1996 for the five sites recommended by the Council, as well as two sites (Storrs Lake and Badfish Creek) proposed as alternatives by Wildlife Program staff. The evaluation teams focused their reviews on existing trails and roads, with development of new trails restricted to short segments needed as links. The priority was to minimize the potential impacts to wildlife and wildlife habitat, thereby maintaining the primary uses of the WA's. Two WA's proposed by the Council (Tom Lawin and Yellowstone) and one site suggested as an alternative (Storrs Lake) rated very highly in the evaluation, and are recommended by the respective review teams as WA's for horse trails.

Proposal:

This action represents a change from past policy:

For those sites purchased, entirely or in part, with federal monies, authority is sought to forward the proposal for a horse trail to the Service for review. Storrs Lake is the only WA of the three recommended that was purchased using federal funds. If the trail is approved, a Service biologist will conduct semi-annual or, at a minimum, annual site inspections on the property until such time that the agency is assured that no impacts to wildlife or wildlife habitat are occurring as a result of this secondary use. A similar process will also be conducted for sites without Service involvement by the local wildlife manager and a Bureau representative.

It is also proposed to move to the next stage of the review procedure—public meetings. The objective of these meetings will be to hear support and concerns for proposed trails from a broad cross-section of users. Impacts, real or perceived, will be assessed and work with users will be done to reach consensus on development of each horse trail. For those sites not recommended, a Bureau representative will meet with the local equestrian group and Wisconsin State Horse Trail Council to review the evaluation and discuss possible alternatives.

For each WA where consensus among users is reached, authorization is sought to amend the master plan to permit siting of a horse trail through a cooperative agreement with the local equestrian group, similar to those agreements between the DNR and snowmobile groups. The local wildlife or facility manager will provide guidance on trail siting and accepted techniques for development and maintenance, but no DNR staff will perform any activities related to development or maintenance of the trail. The Council, as well as local equestrian groups, understand that no state funds are available for development or maintenance of horse trails on WA's. The Council has a granting process through which local equestrian groups can obtain monies for such activities and has attached a high priority to proposals for work on WA's. Groups will also use their own funds and/or labor to develop and maintain the trails to DNR standards. Managers will evaluate potential impacts over the agreement period as part of their normal activities on the property. The evaluation teams have already outlined the restrictions needed to protect the rights and safety of current and equestrian users. These restrictions result in temporary horse trail closures that will be delineated in the cooperative agreement and posted at the trail, but otherwise the trail will be open to the general public.

Statutory authority:

Section 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The anticipated time commitment is 27 hours. Three public hearings will be held in March, 1997 at communities near the wildlife areas (WA's).

Pharmacy Examining Board

Subject:

Phar Code – Relating to clarification of administrative rules.

Description of policy issues:

Description of the objective of the rule:

The changes being recommended relate to such technical matters as:

- ☐ Amending form, style, grammar or punctuation in order to improve readability;
- ☐ Eliminating outdated provisions; and,
- ☐ Updating citations to statutes for accuracy.

They also create a provision referencing the provision of reasonable accommodations required under the Americans With Disabilities Act.

Policy analysis:

The proposed changes do not alter or modify any current substantive requirements of licensees or applicants for licensure. More specifically, the provisions would:

- * Repeal outdated transition provisions. Repeal language relating to forfeitures that is inconsistent with current procedures.
- * Modify language for consistency with statutory authority.
- * Clarify specific types of examinations, passing scores, examination review procedures, cheating on examinations, identification presented at examinations.
- * Update list of actions deemed to constitute unprofessional conduct.
- * Create and modify definitions.
- * Create a provision relating to reasonable accommodations as required under the Americans with Disabilities Act.
- * Create a provision for renewing a license after five years of nonrenewal.
- * Reporting change of name or address to the Department.
- * Replace statutory citations to reflect the renumbering of the Controlled Substances Act.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 450.02, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

15 hours.

Regulation and Licensing

Subject:

RL Code – Relating to administrative rules relating to auctioneers and auctioneer companies.

Description of policy issues:

Objective of the rule:

The Department of Regulation and Licensing is considering the repeal of ch. RL 123, relating to the contents to advertisements placed by auctioneers and auction companies. Several of the provisions may be modified and moved to ch. RL 126, relating to unprofessional conduct.

The Department is also considering amending ch. RL 125, relating to auctioneer trust accounts. The amendments would require auctioneers and auction companies to notify the Department when they change the name or number of an account, change the financial institution where the account is held or close an account. The amendments would also contain more specific requirements relating to check registers, ledgers, journals, reconciling an account, commingling personal funds and trust funds and would address other similar trust account provisions.

Policy analysis:

The current rules require that auctioneers and auction companies include several items of information in every advertisement placed for a specific auction. Such items of information are in addition to the statutory requirement that advertisements contain the name of the auctioneer who will conduct the auction and the name of the auction company that is managing the auction, plus a statement that the auctioneer is a “registered Wisconsin auctioneer.” The current rules also require that advertisements must contain the registration number, the address and the telephone number of the auctioneer or the auction company, or both. Advertisements must also contain a statement of the terms and conditions under which the auctioneer or auction company will accept payment by buyers at the auction and the percentage or other amount of any buyer’s premium or surcharge which is a condition to sale.

The current statutes and rules require auctioneers and auction companies to notify the Department when they open a trust account. Current rules also contain provisions concerning commingling funds in a trust account and the rules contain general provisions concerning the maintenance of a bookkeeping system. Current rules state that an auctioneer or auction company disburses the auction proceeds within 24 hours after the auction. This 24-hour provision would not be changed by this rule-making.

This rule-making proposes to include the policy changes described above. The policy alternatives are to keep the advertising requirements which are now in the rules, to completely repeal them, or to amend them and to move them to the chapter relating to professional conduct. The policy alternatives relating to the trust account rules are to keep them rather broad and general or to be more specific in several areas, so that auctioneers and auction companies will keep better records and the Department’s auditors may more easily and accurately audit trust accounts.

Statutory authority:

Sections 227.11 (2) and 480.06, Stats.

Estimate of the amount of time that state employees will spend to develop the rule, and of other resources necessary to develop the rule:

6 hours.

Transportation

Subject:

Ch. Trans 152 – Relating to fees paid by Wisconsin-based interstate trucking companies for IFTA decals and licenses.

Description of policy issues:

Description of the objective of the rule:

This proposal will amend ch. Trans 152 to increase the fees paid by Wisconsin-based interstate trucking companies for International Fuel Tax Agreement (IFTA) decals and licenses.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives:

The International Fuel Tax Agreement (IFTA) is a compact of states and Canadian provinces that simplifies the reporting and distribution of fuel use taxes paid by interstate motor carriers. Currently Wisconsin-based interstate trucking companies pay \$3 annually for an IFTA license and \$2 per vehicle annually for IFTA decals. Revenue from IFTA license and decal fees no longer covers the Department’s costs to administer the IFTA program. The Department proposes a rule change to increase the annual IFTA decal and license fees in an equitable manner to support the administrative cost of the IFTA program.

Statutory authority for the rule:

S. 341.45 (5g), Stats.

Estimate of the amount of time that state employees will spend to develop the rule, and of other resources necessary to develop the rule:

It is estimated that state employees will spend 160 hours on the rule-making process, including research, drafting and conducting public hearing(s).

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On January 29, 1997, the Wisconsin Department of Agriculture, Trade and Consumer Protection submitted a proposed administrative rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

The proposed rule amends ch. ATPC 124, Wis. Adm. Code, relating to price comparison advertising.

Agency Procedure for Promulgation

The Department will hold public hearings on this rule on dates and locations to be announced. The Division of Trade and Consumer Protection is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

M. Fran Tryon
Division of Trade & Consumer Protection
Telephone (608) 224-4921

or

Attorney David Ghilardi
Telephone (608) 224-5030

Corrections

Rule Submittal Date

Notice is hereby given that, pursuant to s. 227.14 (4m), Stats., on January 30, 1997, the Wisconsin Department of Corrections submitted a proposed administrative rule to the Wisconsin Legislative Council Staff.

Analysis

The proposed rule affects ch. DOC 303, Wis. Adm. Code, relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline.

Agency Procedure for Promulgation

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The Division of Adult Institutions is the organizational unit primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Deborah Rychlowski
Telephone (608) 266-8426

Health & Family Services

Rule Submittal Date

On January 21, 1997, the Department of Health and Family Services submitted a proposed administrative rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

Statutory authority: s. 46.976 (4), Stats.

The proposed rule affects ch. HSS 70, relating to loans to help establish group homes for recovering substance abusers.

This is an updating of the Department's rules for a program of loans from a revolving fund to help nonprofit organizations with the costs of establishing group homes for people recovering from alcohol abuse or drug abuse.

The major change in the rules is to increase the minimum size of a supported group home from 4 to 6 residents. This change is being made because 1995 Wis. Act 27 made that change in the program statute after the federal government made the change in the program.

The \$100,000 revolving fund from which loans of up to \$4000 are available consists entirely of federal monies.

The order also makes the Department's name and the organization responsible for conducting hearings on program decisions of Department staff consistent with how state executive agencies were reorganized effective July 1, 1996.

Agency Procedure for Promulgation

Notice published without public hearing unless petition for public hearing is received; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

If you have questions regarding this rule, you may contact:

Vincent Ritacca, Division of Supportive Living
Telephone (608) 266-2754

NOTICE SECTION

Notice of Proposed Rule Administration

Notice is hereby given that pursuant to ss. 16.004 (1), 218.01 (5) (c) and 227.11 (2), Stats., and according to the procedures set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **February 15, 1997**, the Department of Administration is petitioned for a public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Dept. of Administration

Statutory authority: ss. 16.004 (1) and 218.01 (5) (c)

Statutes interpreted: ss. 218.01 (5) and 218.11 (3)

Section 218.101, Stats., was created in 1991 Wis. Act 269, authorizing the Department of Administration to administer subch. VI of ch. 218, Stats., as it relates to manufactured/mobile home dealers and salespeople engaged in the sale of primary housing units. This chapter establishes the financial qualifications for applicants for manufactured/mobile home dealer licenses.

Manufactured/mobile home dealers have been regulated under the former ch. Trans 140 since the program was transferred to the Department of Administration in July, 1992. Chapter Trans 140 is not being repealed by the Department because it was amended by the Department of Transportation in March 1996, and now applies only to dealers that sell recreational vehicles since those dealers continue to be licensed by the Department of Transportation, Division of Motor Vehicles.

Text of Rule

SECTION 1: Chapter Adm 66 is created to read:

Chapter Adm 66

MANUFACTURED HOME DEALER FINANCIAL ELIGIBILITY

Adm 66.01 Purpose and scope. This chapter is promulgated under the authority of ss. 16.004(1) and 218.01 (5) (c), Stats., to implement s. 218.11, Stats. This chapter applies to any sole proprietorship, partnership, or corporate entity applying for or holding a Wisconsin dealer's license under ss. 218.11 and 218.12, Stats.

Adm 66.02 Definitions. In this chapter:

- (1) "Department" means the department of administration.
- (2) "Discounted" means an asset which is not considered at full value when determining financial statement net worth.
- (3) "Financial statement" means a balance sheet showing assets, liabilities and net worth.
- (4) "GAAP" means generally accepted accounting principles.
- (5) "Intangible asset" means an asset which does not have a readily determined value, such as goodwill, and is not generally offered for sale.
- (6) "Major liability" means a liability equal to or greater than 10% of the total liabilities listed on the financial statement.
- (7) "Manufactured home" or "home" means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure shall be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions shall include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07 (3), Stats.
- (8) "Manufactured home dealer" or "dealer" means any of the following:
 - (a) A mobile home dealer as set forth in s. 218.10 (3), Stats., but does not include:
 1. A recreational vehicle dealer as defined in s. Trans 142.02 (7).
 2. Governmental units or agents performing their official duties.

3. Advertising media and agents performing their official duties.

4. A licensed realtor involved in a manufactured home sale solely as a result of a real estate transaction including the manufactured home and the real estate site on which the manufactured home is located.

(b) A person not excluded by par. (a) who sells two or more new or used manufactured homes in any one calendar year.

(9) "Mobile home" has the meaning given in s. 340.01 (29), Stats.

(10) "Net worth" means the difference between the asset and liability values on a balance sheet. Negative net worth is the excess of liabilities over assets.

(11) "Pro-forma statement" means a statement presented anticipating some event or events which will occur in the future.

(12) "Substantial portion of the assets" means a value greater than 30% of all assets.

Adm 66.03 Balance sheet information. (1) A license applicant shall submit a balance sheet dated not more than 90 days prior to the date of application, that is prepared in accordance with GAAP. A small business as defined in s. 227.114 (1) (a), Stats., which does no interim financial reporting may submit a balance sheet from the close of the business's most recent fiscal year. The balance sheet shall contain all of the following:

(a) Assets.

(b) Liabilities.

(c) Net worth.

(d) The signature of one of the corporate officers, partners or owners.

(e) The name of any bank or financial institution used by the applicant.

(f) A schedule of securities owned, if any.

(g) A schedule of all real property held, its fair market value, book value, and the amount and terms of any indebtedness.

(2) Pro-forma statements shall not be accepted.

(3) If the department determines that there has been a misstatement on a financial statement, the department may deny or revoke the license.

Adm 66.04 Asset reporting. (1) **VALUATION.** The financial statement shall present assets in terms of historical cost or book value of assets. In lieu of a statement presented with historical cost of fixed assets or book value of assets, the department may consider a statement presenting fair market value information of fixed assets if clearly labeled and accompanied by an appraisal report of a certified appraiser or tax appraisal.

(2) **CASH.** Whenever a substantial portion of the assets of an entity is in the form of cash, confirmation of the amount is required from the financial institution holding the cash.

(3) **RECEIVABLES.** When a substantial portion of the assets of an entity are in the form of receivables from another individual, partnership, or corporation, all or part of the receivables shall be discounted in considering the net worth of the applicant. In order to evaluate the quality of a receivable, a financial statement from the individual, partnership or corporation shall be required. In no case will the department discount factory receivables.

(4) **INVENTORY.** The financial statement shall include the number of units in inventory and the number of units floor planned or used for loan collateral.

(5) **CERTAIN ASSETS NOT TO BE CONSIDERED.** The department shall not consider the following assets in evaluating the financial statement of an applicant:

(a) As specified in s. 815.20, Stats., equity in homestead property up to \$25,000.

(b) As specified in s. 815.18 (3), Stats., items of personal property which are exempt from execution.

(c) Any intangible asset values.

(d) Leasehold improvements.

(e) All other assets subject to prior liens, security arrangements or other pledges.

Adm 66.05 Liability reporting. (1) **REPORTING.** All liabilities and contingent liabilities shall be reported. The terms, amounts and conditions of any major liabilities shall be separately scheduled. The schedule shall list the names of individuals or institutions that hold the debt, the amount of the debt and the terms of repayment. A list of customers and the amounts on deposit with the dealer shall be attached to the financial statement.

(2) **RATIO ANALYSIS.** A ratio analysis comparing liabilities with assets shall be used to evaluate a dealer's financial potential. If current liabilities exceed current assets, the department may deny, suspend or revoke a dealer's license. An exception to this subsection shall be made when the current ratio is less than 1 to 1 solely due to the manner the dealership has chosen to account for leasing operations.

Adm 66.06 Net worth reporting. (1) **TREASURY STOCK.** Treasury stock held by a corporation shall be reported separately on the balance sheet and clearly labeled as treasury stock.

(2) **PREVIOUS PROFIT.** Profit from the previous period of operations shall be reported separately in the net worth section of the balance sheet.

(3) **NEGATIVE NET WORTH.** A financial statement with a negative net worth is evidence of a lack of financial ability to conduct business and the license shall be denied or revoked.

Adm 66.07 Types of entities. (1) **SOLE PROPRIETORSHIPS.** A sole proprietorship shall report the entire value of assets jointly owned by the sole proprietor and by one or more persons on its financial statement. The financial statement shall be signed by the sole proprietor.

(2) **PARTNERSHIPS.** Partnerships shall submit a statement for the partnership as a whole and individual statement for each of the general partners. If the partnership agreement provides for anything other than an equal sharing by the partners, it shall be prominently noted on the statements. The provisions of sub. (1) relating to the listing of jointly owned assets also apply to this subsection.

(3) **CORPORATIONS.** (a) A financial statement is required for the corporation which will hold the license. A financial statement of a controlling corporation, parent corporation, or an interlocking corporation may be submitted but shall not be substituted for the financial statement of the applicant.

- (b) The individual who holds the office of president of a corporation may not also hold either the office of secretary or vice president as specified in s. 180.41, Stats.
- Adm 66.08 Copies required.** Mobile home dealers shall file their statements in duplicate. The department shall forward the duplicate copy to the co-licensor; the department of financial institutions.
- Adm 66.09 General requirements.** (1) OPERATING STATEMENT. The department may require a dealer to submit an income statement or other financial information for any of the following:
- (a) An initial license.
 - (b) Renewal of a license.
 - (c) A change in the licensee.
 - (d) If any questions arise regarding the dealer's financial condition.
- (2) ACCEPTABLE NET WORTH.
- (a) The following table shall be used in determining the acceptable minimum level of net worth of an applicant:

| Annual Home Sales Volume | |
|-------------------------------|-----------|
| Number of Homes Sold Per Year | Amount |
| New Dealer | \$25,000 |
| 1 – 10 | \$25,000 |
| 11 – 50 | \$50,000 |
| 51 – 150 | \$100,000 |
| Over 151 | \$150,000 |

- (b) The department may deny the license of any applicant who fails to meet the net worth criteria set out in par. (a).

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the Department does not anticipate that the proposed rule will have any adverse impact on small businesses.

Fiscal Estimate

There is no fiscal effect.

Contact Person

Donna Sorenson
Telephone (608) 266-2887
Dept. of Administration
101 E. Wilson St., 10th Floor
Madison, WI 53702

Notice of Proposed Rule Administration

Notice is hereby given that pursuant to ss. 16.004 (1), 218.101 (1) and 218.16 and 227.11 (2), Stats., and according to the procedures set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **February 15, 1997**, the Department of Administration is petitioned for a public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Dept. of Administration

Statutory authority: ss. 16.004 (1), 218.101 (1) and 218.16

Statutes interpreted: ss. 218.01 (5) (a), 218.11, and 218.12

Section 218.101, Stats., was created in 1991 Wis. Act 269, authorizing the Department of Administration to administer subch. VI of ch. 218, Stats., as it relates to manufactured/mobile home dealers and salespeople engaged in the sale of primary housing units. The rule establishes the standards for manufactured home dealer trade practices, facilities and records.

Text of Rule

SECTION 1. Chapter Trans 141 is repealed.

SECTION 2. Chapter Adm 67 is created to read:

Chapter Adm 67

MANUFACTURED HOME DEALER TRADE PRACTICES, FACILITIES AND RECORDS

Adm 67.01 Purpose and authority. This chapter is promulgated under the authority of ss. 16.004 (1), 218.101 (1) and 218.16, Stats., to implement ss. 218.01 (5) (a), 218.11 and 218.12, Stats. This chapter applies to any person applying for or holding a Wisconsin manufactured home dealer or salesperson license.

Adm 67.02 Definitions. In this chapter:

- (1) “Available for delivery” means a home that has been constructed and is ready to be delivered to the purchaser from the home sales location or the point of manufacture.
 - (2) “Cash price” means dealer asking price including dealer installed options and accessories and additional dealer mark-up, profit and transportation charges, minus the dollar value of cash discounts.
 - (3) “Damage” means defects caused by reasons other than normal wear through home age and usage.
 - (4) “Department” means the department of administration.
 - (5) “Licensee” means any manufactured home dealer or salesperson or any person who is both a manufactured home dealer and a salesperson.
 - (6) “Manufactured home” or “home” means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure will be based on the structure’s exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07 (3), Stats.
 - (7) “Manufactured home dealer” or “dealer” means any of the following:
 1. A recreational vehicle dealer as set forth in s. 218.10 (3), Stats., but does not include:
 2. Governmental units or agents performing their official duties.
 3. Advertising media and agents performing their assigned duties.
 4. A licensed realtor involved in a manufactured home sale solely as a result of a real estate transaction including the manufactured home and the real estate site on which the manufactured home is located.
 - (8) A person not excluded by par. (a) who sells two or more new or used manufactured homes in any one calendar year.
 - (9) “Mobile home” has the meaning set forth in s. 340.01 (29), Stats.
 - (10) “New home” means a manufactured home that has never been occupied, used or sold for personal or business use.
 - (11) “Retail purchaser” or “purchaser” means any purchaser not licensed as a manufactured home dealer or salesperson.
 - (12) “Service agreement” means any repair agreement sold by a licensee.
 - (13) “Used home” means any untitled or titled manufactured home or mobile home that has been previously occupied, used or sold for personal or business use.
 - (14) “Site” means any plot of land which is owned or rented, and used or intended to be used for the accommodation of a manufactured home or mobile home for residential purposes.
- Adm 67.03 Advertising and sales representations.** (1) **TRUTHFUL.** The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a manufactured home constitutes an unfair practice and is prohibited.
- (2) **FACTUAL.** Any licensee, making a statement of fact to the public in an advertisement, written statement or representation concerning the manufactured home offered for sale, the services provided or any other aspects of business operation, shall upon request of the department, furnish evidence of the validity and accuracy of the statement of fact at the time it was made.
 - (3) **DISCLOSURES REQUIRED WHEN ADVERTISING PRICE.** When the price of a manufactured home is advertised by a licensee, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the advertised home with the exception of the sales tax and the title registration fees.
 - (4) **NAME.** Advertisements for manufactured home sales shall include the licensed business name.
 - (5) **NEW OR USED.** When advertising a manufactured home, a licensee shall state whether the home is new or used. If all of the homes in an advertisement are new or used, one reference designating that they are new or used is sufficient.
 - (6) **EXPIRATION TERMS OF SALES OR PROMOTIONS.** Whenever a sale or promotion offering gifts, merchandise, equipment, accessories, service, discounts, price reductions or cash is advertised, the advertisement shall specifically disclose the expiration terms or date of the sale or promotion.

Adm 67.04 Purchase contract. (1) USAGE.

- (a) A licensee shall furnish retail purchasers with a copy of a document entitled "manufactured home purchase contract" that clearly states that the retail purchaser is making an offer to purchase a manufactured home. An exact copy of the purchase contract shall be provided to the purchaser at the time the purchaser signs the offer and again after the offer is accepted by the dealer. Any changes in the purchase contract after signing by the purchaser or subsequent to acceptance by the dealer shall be initiated by all the parties on all copies.
- (b) A manufactured home purchase contract shall be executed whenever the licensee accepts a down payment, deposit, or title for a trade-in unit from a prospective retail purchaser.
- (2) **CONTRACT FACE REQUIREMENTS.** A purchase contract shall accomplish all of the following on its face:
- (a) Clearly identify the names and addresses of the dealer and the purchaser.
- (b) Describe the manufactured home purchased by year, make, model and identification number, and any trade-in unit by year, make and model and specify whether the purchased home is new or used.
- (c) State the date and time each signature is affixed.
- (d) Include the salesperson's name and license number in an area separate from the signatures of the purchaser and dealer or authorized representative.
- (e) Specify an anticipated delivery date and state further in bold faced type next to the anticipated delivery date: **IF THE MANUFACTURED HOME ORDERED BY THE PURCHASER IS NOT AVAILABLE FOR DELIVERY BY THE DEALER WITHIN 15 CALENDAR DAYS AFTER THE ANTICIPATED DELIVERY DATE, EXCEPT WHEN TRIP PERMITS TO TRANSPORT THE HOME CANNOT BE ISSUED, THE PURCHASER MAY CANCEL THIS ORDER. THE PURCHASER SHALL RECEIVE A FULL REFUND OF ANY DOWN PAYMENT AND RETURN OF THE TRADE-IN, OR TITLE FOR THE TRADE-IN OR BOTH BY THE CLOSE OF THE DEALER'S NEXT BUSINESS DAY. IF THE TRADE-IN HAS BEEN SOLD, THE PURCHASER SHALL RECEIVE THE TRADE-IN ALLOWANCE SPECIFIED IN THE OFFER.**
- (f) Clearly state the price due on closing and the known components of that price including, but not limited to, the price of the manufactured home, the price and description of any additional accessories, options or equipment, sales tax, license, title fees, down-payment and trade-in allowance. Rebates shall be stated separately by dollar amount and assignment.
- (g) Clearly state whether the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice, and how long the purchaser has to obtain financing. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel the contract without penalty and shall, by the close of the dealer's next business day, receive a full refund of any down-payment and return of the trade-in, title for the trade-in or both. The licensee may delay returning a deposited down-payment beyond the close of the dealer's next business day only when the purchaser's personal check or other negotiable instrument has not cleared the payor's bank. If the check or other negotiable instrument clears, the licensee shall return, in person or by mail, the down-payment to the purchaser within 24 hours of receiving evidence of clearance. If the trade-in has been sold, the purchaser shall receive the trade-in allowance specified in the offer.
- (h) Specify all other negotiated conditions of the sale not stated elsewhere on the contract.
- (3) **TERMINATION OF OFFER TO PURCHASE.** (a) Unless otherwise specified in the contract, the offer to purchase is automatically voided if the licensee fails to accept or reject the offer by the close of the dealer's next business day.
- (b) The licensee shall not sell the manufactured home to any other party until the offer is rejected by the licensee or the offer is voided in accordance with this section, or the purchaser cancels the contract in accordance with sub. (4c).
- (c) Any down payment, deposit or title shall be returned to the prospective retail purchaser within 2 working hours of the time the offer to purchase is rejected by the licensee. If the prospective purchaser is not present or available during the 2 hour period, those items shall be returned in person or mailed by the close of the dealer's next business day.
- (4) **PENALTIES FOR CANCELLATION BY PURCHASER.** (a) The purchase contract shall clearly state that cancellation of a manufactured home contract within 24 hours of acceptance by a dealer may subject the purchaser to a penalty of up to 1% of the cash price of the manufactured home and that cancellation after the 24 hour period may subject the purchaser to a penalty not to exceed the penalty amount specified in the contract. Modification of the purchase contract shall not extend the 24 hour period. Documented proof of notification of cancellation is required regardless of the method of notification.
- (b) The title and any down-payment or deposit which is not retained by the dealer as a penalty in accordance with par. (a) shall be returned to the purchaser by the close of the dealer's next business day following receipt of the purchaser's notice of cancellation.
- (5) **PRICE CHANGES.** Any increase in price to a retail purchaser after the dealer has accepted an offer is an unfair practice and prohibited except when the price increase is due to any of the following:
- (a) The addition of new equipment required by state or federal law.
- (b) State or federal tax changes.
- (c) The reappraisal of a trade-in unit which has suffered damage as defined in this chapter or is missing parts or accessories which were part of the trade-in unit at the time the purchase contract was executed. Reappraisal by the licensee shall be limited to an amount equal to the retail repair costs of damages incurred, or to the value of parts or accessories removed.
- (6) **WARRANTIES.** (a) Reference to any warranties, service agreements or warranty disclaimers which apply to the manufactured home shall be made on the purchase contract.
- (b) If a manufactured home is sold with a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time the home is delivered.
- (c) If a manufactured home is sold on an as is, no warranty basis, the purchase contract shall include the following statement in bold face type: **"AS IS - NO WARRANTY" - "EXCEPT FOR ANY EXPRESSED OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS MANUFACTURED HOME, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS HOME IS WITH THE PURCHASER, AND SHOULD THE HOME PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE PURCHASER SHALL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR."**
- (d) A warrantor shall service or repair a manufactured home in accordance with the terms and conditions of the warranty or service agreement.

(7) **NAME OF PRIOR OWNER.** The purchase contract shall include the name and address of the current titled owner if the manufactured home is consigned to or listed by the licensee. The name and address of the previous owner shall be kept on file at the dealer's business office if the manufactured home is owned and offered for sale by the licensee.

(8) **ON SITE SALES.** If the manufactured home is displayed for sale on a rental lot site or if a licensee represents that a manufactured home may occupy a site in a specified home park, the dealer shall:

- (a) Clearly state on the purchase contract whether or not the manufactured home may have to be moved from the site.
- (b) Clearly state on the purchase contract that the contract is voidable by the purchaser if the purchaser or home is not acceptable in the home park.
- (c) If the home may remain on site, inform the prospective purchaser in writing prior to the execution of the contract that a copy of the current home park lease and rules may be obtained from the current home owner or park operator.

(9) **SERVICE FEES.** A licensee shall not assess a purchaser an additional service charge or fee for completing any sales related home inspection forms which are required by law or rule.

(10) **WAIVER.** The use of a manufactured home purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and is prohibited.

Adm 67.05 Selling agreements. (1) **USAGE AND CONTENTS.** Whenever a manufactured home dealer lists or offers to sell a home on consignment a written selling agreement shall be completed and shall include:

- (a) The date of the selling agreement.
- (b) The name of the home owner and dealer and any other parties to the agreement.
- (c) The description of the home including year, make and identification number.
- (d) The terms of the agreement including the duration of the agreement, the selling price, the amount of sales commission or fee and when the sales commission or fee is to be paid. The sales commission or fee shall not be charged until the sale of the home.
- (e) A statement by the owner indicating that either the home is clear of any liens, or the amount of any outstanding lien balance.
- (f) Signatures of the home owner and the selling dealer.

(2) **ON-SITE SALES ON RENTAL SITES.** Manufactured homes selling agreements for units offered for sale on-site shall state whether the home may remain on the same rental lot following the sale. If it may remain, the park operator or owners of the land shall provide the licensee with a copy of the current lease agreement and written rules.

(3) **NET SALES PROHIBITED.** Licensees shall not obtain, negotiate, or attempt to negotiate any manufactured home selling agreement providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the licensee as commission.

(4) **COOLING PERIOD.** Whenever a home is sold away from the licensed place of business, the dealer shall furnish the customer with a written notice of the 3-day cooling-off rights pursuant to s. 423.202, Stats.

Adm 67.06 Disclosure of the condition of the manufactured home. (1) **MODEL YEAR DESIGNATION.** Changing the model year of a manufactured home is an unfair practice and is prohibited. If no model year is designated, the year of manufacture applies.

(2) **NEW MANUFACTURED HOME DISCLOSURE.** The licensee shall, on the face of the new manufactured home purchase contract, disclose all dealer installed options or accessories and whether or not the options or accessories are warranted.

(3) **USED MANUFACTURED HOME GENERAL CONDITION DISCLOSURE.** (a) Licensees shall inform prospective retail purchasers of used manufactured homes in writing before the execution of the purchase contract in the manner and on the form prescribed by the department, of all significant structural or mechanical defects or damage. If the licensee is unable to determine whether specific damage or defects exist, that fact shall also be noted on the disclosure form. Disclosure of information shall include that which the licensee discovers as a result of a close visual inspection which shall consist of, but is not limited to, a walk-around and interior inspection, an under home inspection, roof inspection and inspection of the appliances. Licensees are not required to dismantle any part of the manufactured home during the inspection process.

(b) Unless otherwise agreed to in the purchase contract, the inspection disclosures shall neither create any warranties, expressed or implied, or affect warranty coverage provided for in the purchase contract.

Adm 67.07 Facilities and records. (1) **BUSINESS FACILITIES.** Business facilities required to be provided and maintained by manufactured home dealers shall be as follows:

(a) A business office shall maintain books, records and files necessary to conduct business. The required business office may be established within a residence if it is accessible to an outside entrance and is used primarily for conducting the manufactured home business.

(b) If a display lot is provided, it shall be within the same block or directly across the street from the main business location.

(c) A repair shop, or a service contract with a nearby repair shop, where there are repair tools, repair equipment and personnel to perform the services provided for in a warranty applicable to a home sold by the dealer. Any service contract shall be on the form provided by the department.

(2) **RELOCATION.** A licensed location may not be relocated without notice to the department.

(3) **ZONING.** The business premises shall comply with all local zoning, building code and permit requirements.

(4) **SIGN.** Manufactured home dealers who carry and display inventory shall provide an exterior business sign in compliance with s. 100.18 (5), Stats.

(5) **TEMPORARY SALES LOCATIONS.** Manufactured homes dealers shall be permitted to display and sell homes at a temporary site other than the licensed place of business provided that:

(a) Each licensee furnishes the department with written notification of the sale and location at least 10 days in advance of any temporary sale to last longer than 10 days.

(b) The dealer does not participate in more than 6 sales at a temporary site during each licensing calendar year.

(c) A consigned, listed or model home shall not be considered a temporary sales location.

- (6) RECORDS KEPT. The minimum of books and records required to be kept and maintained at the license business premises by a manufactured home dealer under ss. 218.11 (3) and (7) (c) and 342.16 (2), Stats., shall include:
- (a) The title for each used home owned and offered for sale and the manufacturer's statement of origin information for each new home owned and offered for sale. The dealer shall also have either a factory invoice, a completed dealer reassignment form or a purchase contract evidencing trade-in or purchase when a manufacturer or lending institution is holding the title or manufacturer's statement of origin of the manufactured home.
 - (b) A written selling agreement between the owner and dealer for each manufactured home owned by an individual and offered for sale or listed by the dealer.
 - (c) The original or a copy of all manufactured home purchase contracts, purchase orders and invoices. The records shall also include a copy of MVI Wisconsin title and registration application forms as additional evidence of the sale as well as information regarding collection of sales tax and Wisconsin title and registration fees.
 - (d) A record of every manufactured home bought, sold, exchanged, consigned, or listed. The information shall be maintained at each licensed location in the following format:

| Acquired | | New | | Date Sold | | Disposed | |
|----------|----------------|---------|---------|-----------|-------------|----------|------------|
| Date | Name & Address | or Year | Make-ID | or | or Disposed | to: Name | of or sold |
| Acquired | Address | Used | Make-ID | of | | | & Address |

- (7) MAINTENANCE OF RECORDS. The record book described in sub. (6) (d) shall be maintained for 5 years as required by s. 342.16 (2), Stats., and all other required records shall be maintained for a period of 5 years from the date of sale including copies of factory invoices, dealer reassignment forms, selling agreements, purchase contracts, MVI and MVI11 Wisconsin title and registration applications, regular and conforming power of attorney forms for motor vehicles taken in on trade, and prior owner odometer disclosure statements. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by the department during reasonable business hours.

Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the Department does not anticipate that the proposed rule will have any adverse impact on small businesses.

Fiscal Estimate

There is no fiscal effect.

Contact Person

Donna Sorenson
Telephone (608) 266-2887
Dept. of Administration
101 E. Wilson St., 10th Floor
Madison, WI 53702

Notice of Proposed Rule Administration

Notice is hereby given that pursuant to ss. 16.004 (1), 218.11 (2) (b) 1. and 2., 218.12 (2) (b) 1. and 2., and 227.11 (2), Stats., and according to the procedures set forth in s. 227.16 (2) (e), Stats., the Department of Administration will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **February 15, 1997**, the Department of Administration is petitioned for a public hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis Prepared by the Dept. of Administration

Statutory authority: ss. 16.004 (1), 218.11 (2) (b) 1 and 2, 218.12 (2) (b) 1 and 2

Statutes interpreted: ss. 218.01 (5) (a), 218.11, and 218.12

Section 218.101, Stats., was created in 1991 Wis. Act 269, authorizing the Department of Administration to administer subch. VI of ch. 218, Stats., as it relates to manufactured/mobile home dealers and salespeople engaged in the sale of primary housing units. This chapter establishes the period, expiration date and fee for licenses issued to manufactured home dealers and salespeople. It also establishes the period, expiration date and fee for registration plates issued to dealers.

Manufactured/mobile home dealers and salespersons have been regulated under the former ch. Trans 144 since the program was transferred to the Department of Administration in July, 1992. Chapter Trans 144 is not being repealed by the Department because it is currently used by Department of Transportation for the regulation of recreational vehicle dealers and salespeople since they continue to be licensed by the Department of Transportation, Division of Motor Vehicles.

Text of Rule

SECTION 1. Chapter Adm 68 is created to read:

Chapter Adm 68

**LICENSING PERIODS AND FEES FOR
MANUFACTURED HOME DEALERS AND
SALESPERSONS**

Adm 68.01 Purpose. This chapter establishes the periods, expiration dates and fees for licenses issued by the department under s. 218.11 and 218.12, Stats., to manufactured home dealers and salespersons. It also establishes the periods, expiration dates and fees for registration plates issued to dealers.

Adm 68.02 Definitions. Words and phrases in this chapter have the same meaning as found in chs. 218 and 340, Stats., unless additional interpretations are specified. In this chapter:

- (1) “Branch” means a non-adjacent sales location in the same municipality.
- (2) “Business license” means a license issued by the department under s. 218.11, Stats., to a mobile home dealer.
- (3) “Department” means the department of administration.
- (4) “Individual license” means a license issued by the department under s. 218.12, Stats., to a salesperson.
- (5) “Initial license” means a license issued to a person or business which does not have a license at the time of application.
- (6) “Manufactured home” or “home” means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure shall be based on the structure’s exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07 (3), Stats.
- (7) “Sublot” means a non-adjacent display lot in the same municipality.

Adm 68.03 License periods and expiration dates. (1) BUSINESS LICENSES.

- (a) *General licensing period and expiration dates.* The license period for a business license is 2 years. The department may issue licenses that start and expire on the following dates:

| Date Issued | Date Expired |
|-------------|--------------|
| February 1 | January 31 |
| April 1 | March 31 |
| June 1 | May 31 |
| August 1 | July 31 |
| October 1 | September 30 |
| December 1 | November 30 |

All expiration dates are in the second year after the date the license was issued.

- (b) *Initial business licenses.* The department may issue initial business licenses that go into effect on the dates other than the first day of an even numbered month. The licenses shall expire before the end of two years and the expiration dates shall be as follows:

| Month Issued | Expiration Date |
|---------------------|---|
| December or January | Last November 30 before the end of 2 yrs. |
| February or March | Last January 31 before the end of 2 yrs. |
| April or May | Last March 31 before the end of 2 yrs. |

| | |
|---------------------|--|
| June or July | Last May 31 before the end of 2 yrs. |
| August or September | Last July 31 before the end of 2 yrs. |
| October or November | Last September 30 before the end of 2 yrs. |

(2) INDIVIDUAL LICENSES. (a) Licensing period. The department may issue a salesperson license that remains valid until one of the following conditions occur:

1. The business license held by the person's current employer expires.
2. The person ceases employment with a licensed dealer.
3. The person's employer goes out of business.
4. The department suspends or revokes the person's license.

(b) *Transfer licenses*. A person whose salesperson license is invalidated by ceasing employment with a licensed dealer may request the department to transfer their salesperson license to a new employer without charge, as long as the department receives the application before the new employer's dealer license expires.

(3) REGISTRATION PLATES. The department may register and issue plates to business licensees for periods concurrent with the license periods described in this section.

Adm 68.04 License and registration plate fees. (1) The department shall collect the fees established in the following table from applicants before issuing their licenses or registration plates.

| Type of License | Type of Fee | Amount |
|--------------------------|-----------------------------|--------|
| Manufactured home dealer | License | \$100 |
| | Registration--- 2 plates | \$200 |
| | Additional plates | \$ 25 |
| | Replacement plates | \$ 25 |
| | License | \$100 |
| Branch | License | \$ 50 |
| Sublot | License | \$ 50 |
| Salesperson | License | \$ 50 |

(2) When the department issues a salesperson license for less than the employer's business license period, it may reduce the license fee by \$25 for each full year reduction in the salesperson license period.

Initial Regulatory Flexibility Analysis

1. *Types of small businesses that will be affected by the rule:*
 There are currently 162 licensed mobile home dealers who employ less than 25 individuals. We are unable to determine the gross annual sales for each mobile home dealer. The proposed rule increases the licensing fee by an average of \$67 per year in order to increase revenue to fully fund the program.
2. *Reporting, bookkeeping, and other procedures required for compliance with the rule:*
 None.
3. *Types of professional skills necessary for compliance with the rule:*
 None.

Fiscal Estimate

The proposed rule increases the licensing fees by an additional \$67 per year. The Department estimates that these fees will generate an additional \$10,600 annually, which is the amount needed to meet the costs required to administer the mobile home dealer program based on fiscal year 1998 projections.

Contact Person

Donna Sorenson
Telephone (608) 266-2887
Dept. of Administration
101 E. Wilson St., 10th Floor
Madison, WI 53702

Notice of Hearings
Agriculture, Trade & Consumer Protection

Notice is hereby given that pursuant to ss. 100.20(2) and 227.16, Stats., the state of Wisconsin Department of Agriculture, Trade and Consumer Protection will hold public hearings at the times and places indicated below. At these hearings the department will consider revisions to ch. ATPC 124, Wis. Adm. Code, relating to price comparison advertising. Public comment is being sought on the department's rule proposal. Following the public hearings, the hearing record will remain open until **April 1, 1997** for additional written comments. An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **March 5, 1997** either by writing to Kevin LeRoy, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4934) or by TDD at 608/224-5058.

Hearing Information

March 12, 1997
Wednesday
commencing at 1:00 p.m.

Handicapped accessible

**Milwaukee Regional Division of
Trade & Consumer Protection Office**
10930 W. Potter Road, Suite C
Wauwatosa, WI 43187

March 13, 1997
Thursday
commencing at 1:00 p.m.

Handicapped accessible

**Dept. of Agriculture, Trade &
Consumer Protection**
Conference Room 411
2811 Agriculture Drive
Madison, WI

March 14, 1997
Friday
commencing at 1:30 p.m.

Handicapped accessible

**Green Bay Regional Division of the
Trade & Consumer Protection Office**
Room 152B
200 N. Jefferson
Green Bay, WI 54301

Written comments will be accepted until **April 1, 1997**.

Analysis prepared by the Wisconsin Department of Agriculture, Trade and Consumer Protection

Statutory authority: s. 100.20 (2)

Statute interpreted: s. 100.20

This rule amends the department's price comparison advertising rules under ch. ATPC 124, Wis. Adm. Code. This rule creates new definitions, and gives advertisers greater flexibility to compare their current selling prices to competitors' prices that are more than 90 days old.

Current Rules

The Department of Agriculture, Trade and Consumer Protection is responsible for regulating unfair and deceptive advertising practices under s. 100.18, Stats. (Deceptive Advertising Law) and s. 100.20, Stats. ("Little FTC Act"). The department is also responsible, under s. 120.20, Stats., for regulating unfair methods of competition in business and trade practices in business. Under s. 100.20, Stats., the department has adopted rules to regulate price comparison advertising.

The department adopted the ch. ATCP 124 price comparison advertising rules in 1974 and amended the rules in 1978. Chapter ATCP 124 regulates advertisements in which sellers make specific saving claims for consumer property or services which the sellers are offering for sale: e.g., "50% off," "\$40 value for only \$10," "Was \$50, now only \$25," "introductory offer 50% off," or "\$35, compare elsewhere at \$75".

Under the current ch. ATCP 124 rules, a price comparison claim must be based on one of the following:

- A price at which the seller sold or offered the property or services in the past.
- A price at which a competitor sold or offered the property or services in the past.
- A price at which the seller will offer the property or services for sale in the future.

Currently, ch. ATCP 124 prohibits a seller from making a price comparison claim based on a competitor's price that is more than 90 days old. For example, under the current rule, a business that distributes a yearly catalogue which compares its prices with those of a competitor cannot distribute its catalogues in Wisconsin without violating ch. ATCP 124.

Proposed Rule Amendments

By limiting competitor price comparisons to 90 days before the advertisement, the current rules effectively prevent some businesses who, as a regular method of competition, provide competitor price comparisons beyond the 90-day limit. The proposed rule allows these businesses to offer their goods to consumers in Wisconsin without eliminating standards that assure truthful and fair practices.

The proposed rule would permit a seller to make a price comparison claim based on a competitor's price that is up to two years old while maintaining some safeguards against false or deceptive price comparisons. Under the proposed rule, sellers who wish to compare their price to a competitor's price that is older than ninety days must disclose the method or basis of the comparison in a way that allows the consumer to comprehend to true meaning of the comparison.

The proposed rule provides a definition of "trade area". In the current rules, this phrase is not defined, although it is referred to as the "trade area in which the price comparison is made." This wording has caused confusion as to whether, for example, a business can compare its prices with the prices offered in another state if the advertisement is also circulated in that state. The department believes that the original intent of the drafters was to define "trade area" broadly so as to allow comparisons with prices offered in other states in which the advertisement is circulated. The proposed rule makes it clear that a "trade area" includes areas outside of Wisconsin where the advertisement is also circulated, and that a business can compare a price offered in Wisconsin with prices offered in another state if the advertisement is also circulated in that state.

The proposed rules also provide definitions of "disclose". By providing a definition of "disclose" the proposed rule clarifies what an advertiser must do to meet the notice requirements contained in the rule.

Initial Regulatory Flexibility Analysis

The Department expects the new rule's effect on small business to be minimal. The new rule is less restrictive than the current rule. Very few businesses use competitors' prices from a period beyond 90 days old in their ads. Those that do will need to disclose the method or basis for the comparison in their advertisement.

This new rule could potentially have some effect on the competitive retail environment. This rule will allow retailers to make certain price comparison claims which are not currently allowed. This could harm some business but help others. The effect on the retail environment is difficult to accurately predict, although it is likely that some small business will find it difficult to compete with businesses who were previously unable to market their products in Wisconsin because of their price comparison methods.

Fiscal Estimate

It is anticipated that this rule will have no significant fiscal impact on the department.

Copies

A copy of the rule to be considered, the Initial Regulatory Flexibility Analysis and the Fiscal Estimate may be obtained, free of charge, from the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, Trade and Consumer Protection Division, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708, or by calling (608)224-4934.

Notice of Hearing

State Public Defender

Notice is hereby given that pursuant to s. 977.02 (3), Stats., and interpreting s. 977.07, Stats., the Office of the State Public Defender will hold a public hearing at the time and place indicated below, to consider the amendment of a rule relating to the cost of retained counsel.

Hearing Information

February 28, 1997

Friday

9:00 a.m. to

11:00 a.m.

2nd Floor

315 North Henry St.

MADISON, WI

Reasonable accommodations will be made at the hearing for people with disabilities.

Analysis by Agency

Statutory authority: s. 977.02 (3)

Statute interpreted: s. 977.07

The proposed amendment to s. PD 3.02 (1) is technical in nature, and is necessary to make the rule consistent with current agency practice. Presently, the category related to Class A and B felonies in the “cost of retained counsel” table makes reference to “armed” Class A and B felonies. Current agency practice requires deletion of the term “armed”. The category should correctly state “other Class A & Class B felony”.

Initial Regulatory Flexibility Analysis

This rule would not have a regulatory effect on small businesses.

Fiscal Estimate

Because the amendment to s. PD 3.02 (1) is technical in nature, and is necessary to make the rule consistent with current agency practice, the proposed rule will not have any fiscal impact.

Copies of Proposed Rule and Contact Person

For copies of the proposed rule, or if you have questions, please contact:

Gina Pruski, Deputy Legal Counsel
Telephone (608) 266-6782
315 North Henry St.
Madison, WI 53703-3018

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by **February 28, 1997**.

Notice of Hearing *Public Service Commission*

Notice is hereby given that the Commission intends to amend Chapter PSC 114, Wis. Adm. Code, relating to rules concerning electric safety---Revision of Volume 1 of the Wisconsin State Electrical Code.

Analysis

By letter of September 26, 1996, the Public Service Commission (Commission) appointed an advisory committee (s. 227.13, Stats.) to review and submit recommendations for updating Volume 1 of the Wisconsin State Electrical Code. This part of the code is administered by the Commission. On January 3, 1997, the Commission submitted its notification and Statement of Scope for the subject rulemaking to the Department of Administration and the Revisor of Statutes, pursuant to s. 227.135, Stats.

Volume 1 has been and is based on the National Electrical Safety Code (NESC), which is also known as American National Standards Institute (ANSI) C2. In 1979, 1982, 1985, 1988, 1991 and 1994, the Commission adopted the 1977, 1981, 1984, 1987, 1990 and 1993 editions of the NESC, respectively, with certain changes, deletions and additions.

The 1997 edition of the NESC was recently issued, and a corresponding revision of Volume 1 is now desired to reflect the latest national code, correct existing deficiencies, and make other changes, as necessary, to update and improve the state code. Volume 1 of the Wisconsin State Electrical Code is presently found in ch. PSC 114, Wis. Adm. Code. The Commission proposes to revise ch. PSC 114. The rules in ch. PSC 114 deal with safety requirements for the installation, operation and maintenance of primarily outdoor electric supply and communications lines and facilities used by utilities, including electric and telephone suppliers, railroads, and cable television providers.

Pursuant to authority vested in the Commission by ss. 196.74 and 227.11, Stats., the Commission proposes to amend ch. PSC 114.

Chapter PSC 114, Wis. Adm. Code, will be amended by repeal and recreation. Copies of the proposed ch. PSC 114 are available on request from the Public Service Commission, P.O. Box 7854, Madison, Wisconsin 53707-7854.

Fiscal Impact/Initial Regulatory Flexibility Analysis

There will be no fiscal impact of the proposed rules on state or local units of government. There should also be no significant fiscal impact on the utilities and others subject to these rules, including municipally-owned electric utilities, as there are no significant new or additional requirements contained in this revision of these rules. The proposed rules will have no effect on small businesses.

Environmental Assessment

This is a Type III action under s. PSC 4.10(3), Wis. Adm. Code. Since no unusual circumstances have come to the attention of the Commission which indicate that significant environmental consequences are likely, neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

Hearing Information

Notice is hereby given that the Commission will hold a public hearing with respect to these proposed rules on **Friday, March 14, 1997 at 10:00 a.m., in the Amnicon Falls Hearing Room at the Public Service Commission Office Building, 610 North Whitney Way, Madison, Wisconsin**. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267-9766 or Ann Pfeifer at (608) 266-5473.

Contact People

Anyone having questions regarding the hearing schedule in this notice may call Ann Pfeifer, Administrator, Examining Division, at (608) 266-5473.

Other questions regarding this matter may be directed to Lanny Smith, Director, Technical Unit, Electric Division, at (608) 266-3165 or Mohammed Manawer, Senior Engineer, Electric Division, at (608) 267-7778.

***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.***

Please check the Bulletin of Proceedings for further information on a particular rule.

Chiropractic Examining Board (CR 96-95):

SS. Chir 6.015 and 6.02 (27) and ch. Chir 11 – Relating to patient records.

Corrections (CR 96-175):

S. DOC 309.05 (2) (d) – Relating to stamping outgoing prisoner mail.

Corrections (CR 96-206):

SS. DOC 328.20 and 333.16 – Relating to use of oleoresin of capsicum, firearms and other weapons to Division of Community Corrections employees.

Emergency Response Board (CR 96-129):

Ch. ERB 6 – Relating to reimbursement procedures for regional and local hazardous materials emergency response teams, when a person responsible cannot be found or when the person responsible is unable or unwilling to pay.

Employee Trust Funds (CR 96-167):

S. ETF 60.53 – Relating to deadlines to apply for death benefits payable from the Wisconsin Retirement System (WRS) and timing of automatic distribution of these benefits.

Health & Family Services (CR 95-235):

Ch. HSS 90 – Relating to early intervention services for children in the age group birth to 3 who are found to be developmentally delayed or to have a diagnosed condition which will likely result in developmental delay.

Hearing & Speech Examining Board (CR 96-162):

SS. HAS 4.03, 5.02, 6.02, 6.065 and 6.09 – Relating to calibration of audiometric equipment and the use of support personnel.

Hearing & Speech Examining Board (CR 96-173):

S. HAS 6.09 (2) (o) – Relating to the grounds for discipline for individuals who are credentialed as speech-language pathologists and audiologists.

Labor & Industry Review Commission (CR 96-136):

Chs. LIRC 1 to 4 – Relating to procedural rules concerning petition to and handling of cases by the Labor and Industry Review Commission.

Medical Examining Board (CR 96-158):

Ch. Med 13 – Relating to continuing medical education for podiatrists.

Natural Resources (CR 96-159):

SS. NR 10.01, 10.26 and 11.08 – Relating to sharp-tailed grouse hunting.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Health & Family Services (CR 95-236):

An order creating ch. HFS 89, relating to assisted living facilities.

Effective 03-01-97.

Natural Resources (CR 96-74):

An order affecting ss. NR 7.04, 7.05 and 7.06, relating to the recreational boating facilities program.

Effective 04-01-97.

Natural Resources (CR 96-77):

An order repealing and recreating ch. NR 235, relating to the regulation of effluent limitations and pretreatment standards for the organic chemicals, plastics, and synthetic fibers industry.

Effective 04-01-97.

Natural Resources (CR 96-78):

An order creating ch. NR 233, relating to the regulation of effluent limitations and pretreatment standards for the pesticide chemicals industry.

Effective 04-01-97.

Natural Resources (CR 96-86):

An order affecting ss. NR 439.01, 484.03, 484.04 and 484.10 and ch. NR 460, relating to general provisions for emission standards for hazardous air pollutants.

Effective 04-01-97.

Natural Resources (CR 96-87):

An order affecting chs. NR 400, 407, 423, 460, 468 and 469 and ss. NR 406.04 and 484.04, relating to emission standards for hazardous air pollutants generated from halogenated solvent cleaning operations.

Effective 04-01-97.

Workforce Development (CR 96-140):

An order repealing ss. HSS 55.70 to 55.77 and creating ch. DWD 56, relating to administration of child care funds.

Effective 03-01-97.

THE STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOCUMENT SALES UNIT
P.O. BOX 7840
MADISON, WISCONSIN 53707-7840

First Class
U.S. POSTAGE PAID
Madison, Wisconsin
Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

DATED MATERIAL. PLEASE DO NOT DELAY!